

## **REMARKS**

Claims 11-18 are pending. Claims 11 and 12 have been amended to delete the term "means" from each occurrences with the term "piston". No new matter has been added.

### **Rejections**

Claims 11, and 13-18 have been rejected under 35 U.S.C. §102 as being anticipated by U.S. Pat. No. 3,330,281 (Visser). The Examiner has asserted that Visser discloses all the features of these claims. Claim 12 has been rejected under 35 U.S.C. §103 as being obvious over U.S. Pat. No. 3,330,281 (Visser). The Examiner has taken the position that Visser discloses all the elements of claim 12, except for the piston means being formed integral with the second chamber. The Examiner contends that forming the piston means integral with the second chamber would have been obvious at the time of the present invention.

Applicant respectfully disagrees that the claims are not patentable over Visser.

Visser discloses a container which separately stores two different materials prior to their mixing and use. The apparatus disclosed in Visser comprises a first container (2) having a first chamber capable of being filled with a fluid, and a second container (1) having a second chamber (1a) adapted to receive fluid from the first chamber. However, contrary to the Examiner's position, the apparatus does not disclose the feature that the second container (1) has a piston slidably receivable within the first chamber of the first container (2), wherein the piston has a bore which fluidly communicates with the first and second chambers and the bore has a first portion having a first diameter, and a second portion having a second diameter which is smaller than the first diameter, and wherein, on insertion of the piston means into the first chamber of the first container, fluid is displaced from the first chamber to the second chamber, as required by Claim 11.

The Examiner considers the cannula (needle) (12) of the syringe (S) to be the piston means of Claim 11. Thus, the Examiner contends that when this needle is inserted into the first chamber (2), fluid is displaced from the first chamber to the second chamber. However, this is clearly incorrect. The syringe (S) of Visser clearly does not operate in this manner. As illustrated in Figure 1 and described at column 1, lines 41-69, of the description, the apparatus of Visser is for separately storing materials prior to their use in combination with one another. In this respect, when the two materials are required to be used in combination, the fluid stored in

the syringe is injected into the first container (2) where it is mixed with the material (15). Once mixed, the syringe (S) is used to extract the mixed materials from the first container (2). This is clearly a very different operation as compared with the present invention, where, upon insertion of the piston into the first chamber of the first container, fluid is displaced from the first chamber to the second chamber through the bore of the piston.

It is clear that the insertion of the needle (12) into the first container (2) of Visser does not result in a fluid being displaced from the first container (2) to the second (1). On the contrary, the construction of the syringe in Visser actually prevents displacement of the fluid from the first container to the second until such time as the syringe is emptied and then actuated to withdraw fluid. First, upon insertion into the first container, the syringe is prefilled with a material. Thus, it is impossible for the fluid in the first container to be displaced into the second container upon insertion into the first container. Next, after the material in the syringe is emptied (which only occurs when the plunger is forced completely down), the fluid in the first container still cannot be displaced into the second container until the plunger is retracted. As such, the mere insertion of the syringe in to the first container, even when the syringe has been emptied, cannot produce displacement of the fluid from the first container into the second container. Accordingly, Visser, in actuality, discloses a device that, by its construction, cannot meet the specific claim limitations.

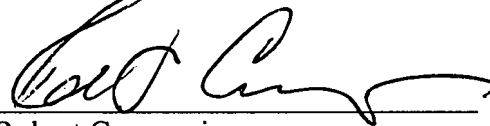
Furthermore, even if the Examiner were to consider to the plunger (8) of the second container (1) to be the piston of amended Claim 1, it is clear that the piston does not have a bore which fluidly communicates with first and second chambers, let alone a bore having first and second portions of different diameters, as required by amended Claim 1.

Based on the foregoing, the Applicant respectfully submits that claim 11 is patentable over Visser. Claims 12-18 depend from claim 11 and, thus, are patentable for all the reasons noted above. What's more, these claims include additional features that further distinguish the claims over Visser. Accordingly, claims 12-18 are also patentable over Visser.

Accordingly, Applicant respectfully submits that claims 11-18 are in condition for allowance. If the Examiner believes that direct communication with Applicants' representative will expedite consideration of this application, the Examiner is invited to contact the undersigned.

Respectfully submitted,  
CHARLES BUCHAN RITCHIE

By:



Robert Cannuscio  
Registration No 36,469  
DRINKER BIDDLE & REATH LLP  
One Logan Square  
18<sup>th</sup> and Cherry Streets  
Philadelphia, PA 19103-6996  
Tel: (215) 988.3303  
Fax: (215) 988.2757  
Attorney for Applicants